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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 E. JEAN CARROLL,

5 Plaintiff,

6 v.

7 20 CV 7311 (LAK)

8 DONLD J. TRUMP, in his
9 personal capacity,

10 Defendant.
11 -----x

12 New York, N.Y.
13 October 21, 2020
14 3:57 p.m.

15 Before:

16 HON. LEWIS A. KAPLAN,

17 District Judge

18 APPEARANCES

19 KAPLAN HECKER & FINK LLP
20 Attorneys for Plaintiff
BY: ROBERTA ANN KAPLAN
MARCELLA COBURN
JOSHUA ADAM MATZ

21 U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION
22 Attorneys for Defendant
23 BY: WILLIAM KERWIN LANE III
STEPHEN TERRELL
CATE CARDINALE

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1 (Case called)

2 THE DEPUTY CLERK: Plaintiff, are you ready? Put your
3 appearances on the record, please.

4 MS. KAPLAN: We are. Roberta Kaplan, from Kaplan
5 Hecker & Fink, for plaintiff. I'm appearing with my colleagues
6 Joshua Matz and Marcella Coburn.

7 THE COURT: Good afternoon.

8 THE DEPUTY CLERK: Counsel for DOJ, are you ready?

9 MR. LANE: We are. William Lane, of the Department of
10 Justice, on behalf of the United States, with Stephen Terrell
11 and Cate Cardinale.

12 THE COURT: Good afternoon, folks.

13 I want to put on the record what has already been a
14 filed order but is likely unknown to quite a number of people
15 with an interest here in the courtroom and online.

16 I had an application within the last couple of hours
17 from counsel for the United States to adjourn this argument.
18 The reasons they put forward are in their letter, which is on
19 the public record.

20 I denied the application and entered an order offering
21 the government three options: First, to present oral argument
22 today by a person who is eligible, under the COVID restrictions
23 in effect in this court, to enter the courthouse; second, to
24 present oral argument today by an attorney for the government
25 from a remote location by telephone; or, third, to have me take

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1 the case on submission — that is, on the papers already on file
2 — without any oral argument and simply go ahead and decide the
3 matter before me.

4 Mr. Lane, the ball is up to you. What does the
5 government elect to do?

6 MR. LANE: Thank you, your Honor. We appreciate you
7 being so accommodating.

8 The United States elects to submit on the briefs
9 without any argument from any side.

10 THE COURT: All right. Is there any reason why I
11 shouldn't do so?

12 MS. KAPLAN: Your Honor, may I be heard?

13 THE COURT: Yes.

14 MS. KAPLAN: Your Honor, Roberta Kaplan, for E. Jean
15 Carroll, who's here in the courtroom today.

16 We're obviously disappointed by this turn of events.
17 E. Jean herself drove some distance to be in court today. And,
18 as I'm sure your Honor is aware, the motion before your Honor
19 is effectively case-dispositive. It's essentially a motion to
20 dismiss in the sense that if your Honor grants the government's
21 motion, there is not a waiver of sovereign immunity with
22 respect to an intentional tort.

23 So if your Honor has any questions, we would be happy
24 to answer them. My partner, Joshua Matz, has worked very hard
25 to be able to address any questions your Honor may have, and if

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1 that's not an option – and it sounds like it's not, your
2 Honor – then we would suggest that, given the fact that the
3 government's moving brief in this case was only five pages
4 long, and we were effectively shooting against a very narrow
5 target, we would respectfully request the opportunity to put in
6 a surreply tomorrow, no more than five pages, addressing the
7 new arguments that showed up in the government's opposition
8 brief.

9 THE COURT: Mr. Lane, what's your view?

10 MR. LANE: Your Honor, the United States would oppose
11 additional briefing. We think briefing has been fulsome and
12 both sides have had sufficient time to argue.

13 THE COURT: Well, I think the fairest way to handle
14 this – because if I allow a surreply by the plaintiff, then the
15 government will be back asking for a surreply of its own – is
16 simply to invoke the time-honored principle that new arguments
17 raised for the first time in a reply brief will not be
18 considered.

19 Mr. Lane, is that acceptable to the United States?

20 MR. LANE: Your Honor, we would strongly prefer no
21 additional briefing.

22 THE COURT: So I take it the answer to my question is
23 yes?

24 MR. LANE: Yes, your Honor.

25 THE COURT: Okay. The matter is taken under

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1 submission.

2 Thank you, all, very much. I'm sorry so many people
3 were inconvenienced.

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